

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE PHARMACEUTICAL INDUSTRY	)	MDL No.1456
AVERAGE WHOLESALE PRICE	)	
LITIGATION	)	Master File No. 01-CV-12257-PBS
	)	Subcategory No. 06-CV-11337-PBS
THIS DOCUMENT RELATES TO:	)	Judge Patti B. Saris
<i>United States of America ex rel. Ven-A-Care of</i>	)	
<i>the Florida Keys, Inc., et al. v. Boehringer</i>	)	Magistrate Judge Marianne B. Bowler
<i>Ingelheim Corporation, et al., Civil Action No.</i>	)	
07-10248-PBS	)	

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**DECLARATION OF JOHN W. REALE  
IN SUPPORT OF THE ROXANE DEFENDANTS'  
MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION**

1. I am a member of the law firm of Kirkland & Ellis LLP, counsel for the Roxane Defendants in the above-captioned action. I am admitted to practice law in the Commonwealth of Massachusetts.

2. Attached to The Roxane Defendants' Memorandum in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction Under the Public Disclosure Bar of the False Claims Act ("Roxane Defendants' Memorandum") as Exhibit A is a true and correct copy of the State of Texas' Third Amended Petition filed on November 17, 2004, in the District Court of Travis County, Texas, in the action entitled *State of Texas ex rel. Ven-A-Care of the Florida Keys, Inc. v. Roxane Laboratories, Inc., et al.*, Case No. GV3-03079.

3. Attached to the Roxane Defendants' Memorandum as Exhibit B is a true and correct copy of the State of Connecticut's Revised Complaint filed on March 5, 2004, in the Superior Court of Connecticut, in the action entitled *State of Connecticut v. Dey, Inc., et al.*, Case No. CV03-0083296 S (CLD).

4. Attached to the Roxane Defendants' Memorandum as Exhibit C is a true and correct copy of the State of Florida's Complaint filed under seal in the Second Judicial Circuit for Leon County, Florida, in the action entitled *State of Florida ex rel. Ven-A-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corporation, et al.*, Civil Action No. 98-3032A, and unsealed on July 9, 2003.

5. Attached to the Roxane Defendants' Memorandum as Exhibit D is a true and correct copy of the Commonwealth of Massachusetts' Complaint filed on September 25, 2003, in the United States District Court for the District of Massachusetts, in the action entitled *Commonwealth of Massachusetts v. Mylan Laboratories, Inc., et al.*, Civil Action No. 03-CV-11865 (PBS).

6. Attached to the Roxane Defendants' Memorandum as Exhibit E is a true and correct copy of the Commonwealth of Pennsylvania's Complaint filed on March 10, 2004, in the Commonwealth Court of Pennsylvania, in the action entitled *Commonwealth of Pennsylvania v. Tap Pharmaceutical Products, Inc., et al.*, Case No. 212 MD 2004.

7. Attached to the Roxane Defendants' Memorandum as Exhibit F is a true and correct copy of the City of New York's Complaint filed on August 4, 2004, in the United States District Court for the Southern District of New York, in the action entitled *City of New York v. Abbot Laboratories, Inc., et al.*, Case No. 04 CV 06054.

8. Attached to the Roxane Defendants' Memorandum as Exhibit G is a true and correct copy of the State of Wisconsin's First Amended Complaint filed on November 1, 2004, in the Circuit Court of Dane County, Wisconsin, in the action entitled *State of Wisconsin v. Amgen, Inc., et al.*, Case No. 04 CV 1709.

9. Attached to the Roxane Defendants' Memorandum as Exhibit H is a true and correct copy of the Commonwealth of Kentucky's Complaint filed on November 4, 2004, in the Circuit Court of Franklin County, Kentucky, in the action entitled *Commonwealth of Kentucky v. Alpharma, Inc., et al.*, Civil Action No. 04-CI-1487.

10. Attached to the Roxane Defendants' Memorandum as Exhibit I is a true and correct copy of the State of Ohio's Complaint filed on November 17, 2004, in the Court of Common Pleas for Hamilton County, Ohio, in the action entitled *State of Ohio v. Roxane Laboratories, Inc., et al.*, Civil Action No. A0409296.

11. Attached to the Roxane Defendants' Memorandum as Exhibit J is a true and correct copy of the State of Alabama's Complaint filed on January 26, 2005, in the Circuit Court of Montgomery County, Alabama, in the action entitled *State of Alabama v. Abbott Laboratories, Inc., et al.*, Civil Action No. 05 CV 219.

12. Attached to the Roxane Defendants' Memorandum as Exhibit K is a true and correct copy of the State of Illinois' Complaint filed on February 7, 2005, in the Circuit Court of Cook County, Illinois, in the action entitled *State of Illinois v. Abbott Laboratories, Inc., et al.*, Case No. 05-CH-02474.

13. Attached to the Roxane Defendants' Memorandum as Exhibit L is a true and correct copy of the Subpoena Duces Tecum issued by the United States of America, Department of Justice to Roxane Laboratories, Inc. on August 25, 2000.

14. Attached to the Roxane Defendants' Memorandum as Exhibit M is a true and correct copy of excerpts from the transcript of the deposition of John M. Lockwood, taken on July 23, 2008 in the above-captioned action.

15. Attached to the Roxane Defendants' Memorandum as Exhibit N is a true and correct copy of excerpts from the transcript of the deposition of T. Mark Jones, taken on December 9, 2008 in the above-captioned action.

16. Attached to the Roxane Defendants' Memorandum as Exhibit O is a true and correct copy of excerpts from the transcript of the deposition of John M. Lockwood, taken on June 19, 2009 in the above-captioned action.

I declare under penalty of perjury that the foregoing is true.

Dated: June 26, 2009  
Chicago, Illinois

Respectfully submitted,

/s/ John W. Reale  
John W. Reale (BBO# 654645)

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending on June 26, 2009, a copy to LexisNexis File and Serve for posting and notification to all parties.

/s/ John W. Reale  
John W. Reale